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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

**JESUS GARCIA**, for himself and  
all others similarly situated,

Plaintiff,

vs.

**CITY OF KING CITY;**  
**BRUCE EDWARD MILLER;**  
**BOBBY JAVIER CARRILLO;**  
**MARIO ALONSO MOTTU, SR.;**  
**JAIME ANDRADE; )**  
**DOMINIC "NICK" BALDIVIEZ;**  
and **BRIAN A. MILLER ,**

Defendants.

) Case No.:

) **COMPLAINT – CLASS ACTION**

) **JURY TRIAL DEMANDED**

Plaintiff Jesus Garcia, for himself and all others similarly situated, brings this action  
against the defendants named herein for appropriate legal and equitable relief for defendants'

1 egregious, outrageous, deliberate, and persistent pattern of wrongful conduct that deprived the  
2 named plaintiff and members of the class of their property without due process of law and in  
3 contravention of the equal protection guarantees of the United States Constitution in violation  
4 of the Civil Rights Act, particularly 42 U.S.C. §§ 1981, 1983 and 1985(3). Plaintiffs further  
5 seek attorneys' fees and litigation costs of this action under 42 U.S.C. § 1988(b).  
6

### 7 **Jurisdiction and Venue**

8 1. This Court has federal question jurisdiction under 28 U.S.C. § 1331 of the  
9 federal-law claims in this action.  
10

11 2. Plaintiff Jesus Garcia is an adult present in this judicial district. Members of the  
12 putative class are persons who suffered the injuries and damages complained of within or near  
13 the police jurisdiction of the City of King City, Monterey County, in this judicial district.  
14

15 3. Defendant City of King City is a California municipality located in Monterey  
16 County, within this judicial district.

17 4. Each individual defendant is an adult and is or was, at the times relevant to this  
18 complaint, residing or present within King City, Monterey County, in this judicial district, and  
19 is subject to the jurisdiction of this Court.  
20

21 5. Venue in this district is proper under 28 U.S.C. § 1391(a) because all or a  
22 substantial part of the events giving rise to the claims herein asserted occurred in this district.  
23 Plaintiff and each member of the class suffered the injuries and damages complained of within  
24 or near the police jurisdiction of the City of King City, Monterey County, in this judicial  
25 district.  
26

27 6. The claims asserted in this initial complaint are brought exclusively under and  
28 pursuant to the federal Civil Rights Act, particularly 42 U.S.C. §§ 1981, 1983, 1985(3), and

1 1988(b).Plaintiff, for himself and the prospective class, will file a timely governmental claim  
 2 against the municipal and individual police officer defendants in accordance with Cal. Gov.  
 3 Code § 900, *et seq.*, and will amend this complaint in the event the said governmental claim is  
 4 against the municipal and individual police officer defendants in accordance with Cal. Gov.  
 5 Code § 900, *et seq.*, and will amend this complaint in the event the said governmental claim is  
 6 not satisfactorily resolved within 45 days of presentment. Cal. Gov. Code §§ 912.4(a), 912.6,  
 7 912.8.  
 8

### 9 **Intradistrict Assignment**

10 Pursuant to Civil L.R. 3-2(e) and except as provided in Civil L.R. 3-2(c), all civil  
 11 actions which arise in the counties of Santa Clara, Santa Cruz, San Benito or Monterey shall be  
 12 assigned to the San Jose Division. Each individual defendant is an adult and is or was, at the  
 13 times relevant to this complaint, residing or present within King City, Monterey County,  
 14 California. Plaintiff and each member of the class suffered the injuries and damages  
 15 complained of within or near the police jurisdiction of the City of King City, Monterey  
 16 County, California.  
 17  
 18

### 19 **Parties**

20 7. Plaintiff Jesus Garcia is an adult present in this judicial district. Members of the  
 21 putative class are persons who suffered the injuries and damages complained of within or near  
 22 the police jurisdiction of the City of King City, Monterey County, in this judicial district.  
 23

24 8. Defendant City of King City is a California municipality located in Monterey  
 25 County, within this judicial district. Defendants Bruce Edward Miller, Bobby Javier Carrillo,  
 26 Mario Alonso Mottu, Sr., Jaime Andrade, and Dominic “Nick” Baldiviez (the “individual  
 27 police officer defendants”) are or were during certain times relevant to this complaint sworn  
 28

1 police officers, agents, and employees of defendant City of King City, and were acting in their  
2 capacity as sworn police officers and under color of law in acting and/or failing to act as  
3 hereafter alleged.

4  
5 9. Defendant Bruce Edward Miller is an adult and is believed to be a resident of  
6 Monterey County, in this judicial district. At certain times relevant to this complaint, defendant  
7 Bruce Edward Miller was a sworn police officer and the Acting Chief of Police of defendant  
8 City of King City. Defendant Bruce Edward Miller is the brother of defendant Brian A. Miller  
9 d/b/a Miller's Towing.

10  
11 10. Defendant Bobby Javier Carrillo is an adult and is believed to be a resident of  
12 Monterey County, in this judicial district. At certain times relevant to this complaint, defendant  
13 Carrillo was a sworn police officer and was acting as patrol supervisor for the Police  
14 Department of defendant City of King City.

15  
16 11. Defendant Mario Alonso Mottu, Sr., is an adult and is believed to be a resident  
17 of Monterey County, in this judicial district. At certain times relevant to this complaint,  
18 defendant Mottu was a sworn police officer of defendant City of King City.

19  
20 12. Defendant Jaime Andrade is an adult and is believed to be a resident of  
21 Monterey County, in this judicial district. At certain times relevant to this complaint, defendant  
22 Andrade was a sworn police officer of defendant City of King City.

23  
24 13. Defendant Dominic "Nick" Baldiviez is an adult and is believed to be a  
25 resident of Monterey County, in this judicial district. At certain times relevant to this  
26 complaint, defendant Baldiviez was a sworn police officer and was Chief of Police of  
27 defendant City of King City.

14. Defendant Brian A. Miller is an adult and is believed to be a resident of Monterey County, in this judicial district. Defendant Brian A. Miller is the owner of Miller's Towing, which appears to be an unincorporated sole proprietorship, in King City, Monterey County. Defendant Brian A. Miller is the brother of defendant Bruce Edward Miller.

### **Claims for Relief**

#### **COUNT I**

#### **Civil Rights: Targeting and Wrongful Taking of Property: Violation of 42 U.S.C. §§ 1981 and 1983 (Against Individual Defendants)**

15. Plaintiff re-alleges each and every preceding allegation and paragraph of this Complaint and incorporates same by reference into this Count I as if here set out in full.

16. The individual police officer defendants (Bruce Edward Miller, Bobby Javier Carrillo, Mario Alonso Mottu, Sr., Jaime Andrade, and Dominic "Nick" Baldiviez) and defendant Brian A. Miller concocted and developed a scheme to target a particular demographic population, that is, economically disadvantaged and low-income persons of Hispanic descent (although other non-Hispanic drivers also were caught up in the scheme) in or near the territorial jurisdiction of defendant King City, California.

17. According to the 2010 United States Census, the City of King City had a total population of 12,874, of which 87.5 percent was Hispanic or Latino. *See* <http://quickfacts.census.gov/qfd/states/06/0638520.html> (Mar. 6, 2014).<sup>1</sup>

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<sup>1</sup>In contrast, Monterey County has a 56.4 percent Hispanic or Latino population. Statewide in California, 37.6 percent of the population was Hispanic or Latino. *Id.*

1           18. Said defendants and/or other unknown persons acting in active concert and  
2 participation with them acting as sworn police officers and under color of law, would make  
3 traffic stops of the said targeted drivers without a proper or legitimate reason, unlawfully seize,  
4 unlawfully impound, and unlawfully sell or have the drivers' vehicles sold, or otherwise  
5 appropriate the drivers' vehicles to the permanent use and benefit of one or more of the  
6 defendants.  
7

8           19. By agreement with other individual defendants, more than 89 percent of the  
9 cases known to plaintiff at this time, the towing, impoundment, and sale of the said vehicles  
10 was accomplished through Miller's Towing, a sole proprietorship owned by defendant Brian  
11 A. Miller (who is the brother of individual police officer defendant Bruce Edward Miller), and  
12 other unknown similar companies and persons accomplished the balance of said wrongful acts.  
13

14           20. In the individual defendants' minds, the targeted persons would be less likely to  
15 complain about the unlawful seizure and sale than other persons and, thus, the scheme would  
16 be less likely to be exposed.  
17

18           21. The individual defendants and/or other unknown persons acting in active  
19 concert and participation with them implemented the foregoing scheme, and unlawfully seized,  
20 towed, impounded, and sold the said vehicles, or had the vehicles sold or otherwise  
21 appropriated to their own benefit, when the owners or those rightfully possessed of the vehicles  
22 could not pay the fines to defendant City of King City and/or the towing and impoundment  
23 fees charged.  
24

25           22. Defendant Brian A. Miller and/or other unknown persons acting in active  
26 concert and participation with them, towed, impounded, and sold or disposed of the plaintiffs'  
27 said vehicles under the ostensible authority and color of state law at the direction of or in  
28

1 agreement with the individual police officer defendants, with full knowledge and participation  
2 in the said scheme.

3         23. As a further part of the scheme, defendant Brian A. Miller then gave the  
4 individual police officers a “free” vehicle as corrupt and unlawful payment in exchange for  
5 every 10 to 15 seizures and impoundments committed and contracted to him by the individual  
6 police officer defendants.

7  
8         24. In furtherance and in execution of the said scheme, in January 2012, plaintiff  
9 and prospective class representative Jesus Garcia, who is of Hispanic/ Latino origin, was  
10 operating his vehicle lawfully upon a public street within the police jurisdiction of defendant  
11 City of King City.

12  
13         25. At that time and place, plaintiff was subjected to a traffic stop by a King City  
14 police officer for an alleged minor traffic infraction, and was issued a traffic citation by the  
15 said police officer. Plaintiff was not arrested or taken into custody by the said King City police  
16 officer.

17  
18         26. Within minutes of plaintiff’s being stopped, a tow truck arrived upon the scene  
19 of the said traffic stop and, without explanation to plaintiff , but at the direction of the said  
20 King City police officer, towed plaintiff’s vehicle to a location unknown to the plaintiff. No  
21 explanation or reason was given by the said police officer for the seizure, towing, and  
22 impoundment of plaintiff’s vehicle, nor were instructions given for the plaintiff’s retrieval of  
23 said vehicle.

24  
25         27. Subsequently, upon investigation, plaintiff was told by the towing company  
26 operator that his vehicle had been impounded at the order of the King City police, and that  
27  
28

1 plaintiff could not recover his vehicle until 30 days had elapsed, and then only upon payment  
2 of all towing and impound fees.

3 28. Plaintiff's vehicle was subsequently sold, disposed of, or converted to the use of  
4 the individual defendants, or converted by the individual defendants to the use of another  
5 person, and plaintiff has been permanently and unlawfully deprived of the use, possession, and  
6 ownership of his vehicle.  
7

8 29. After the plaintiff's and class members' vehicles were unlawfully impounded,  
9 seized, and sold as alleged, the individual defendant police officers and defendant Brian A.  
10 Miller paid a portion of the impoundment fees and sales proceeds to defendant City of King  
11 City as ostensibly payment for fines and fees, and unlawfully retained and kept the balance of  
12 the sales proceeds for their personal use.  
13

14 30. By unlawfully and wrongfully seizing, impounding, and selling or otherwise  
15 disposing of the targeted plaintiff's and class members' vehicles as alleged, the individual  
16 police officer defendants and their non-governmental accomplice and co-actor, defendant  
17 Brian A. Miller wrongfully and unlawfully took and exercised dominion and control over the  
18 plaintiff's and class members' property, deprived plaintiff and class members of their property  
19 without due process of law, and contrary to the non-discrimination and equal protection  
20 guarantees of the United States Constitution, all in deliberate and/or intentional violation of 42  
21 U.S.C. §§ 1981 and 1983.  
22

## 23 **COUNT II**

24 **Civil Rights: Deliberate Indifference:**  
25 **Violation of 42 U.S.C. §§ 1981 and 1983**  
26 **(Against Defendant City of King City)**  
27  
28



1           31. Plaintiff re-alleges each and every preceding allegation and paragraph of this  
2 Complaint and incorporates same by reference into this Count II as if here set out in full.

3           32. Defendant City of King City failed to have in place and/or implement and/or  
4 enforce an adequate policy to prevent the pattern and scheme of wrongful conduct committed  
5 by its sworn police officers and others associated with them as alleged herein, or had in place  
6 such policies that allowed the long-standing, multi-year pattern and scheme of wrongful  
7 conduct resulting in the constitutional deprivations herein alleged to be perpetrated by police  
8 officers, including senior officers at the top of the chain of command of its Police Department.  
9

10           33. Furthermore, defendant City of King City failed to have in place and/or  
11 implement and/or enforce an adequate policy to disclose, reveal, and uncover the long-  
12 standing, multi-year pattern and practice of wrongful conduct committed by its sworn police  
13 officers and others associated with them as alleged herein.  
14

15           34. Defendant City of King City further failed to have in place a policy or  
16 procedure to determine whether the number of seizures of private vehicles for any given period  
17 was excessive based upon the population and traffic volume for the city, and to review the  
18 demographic information regarding persons whose vehicles were seized, impounded, and sold  
19 or otherwise disposed of in order to determine whether any particular group of persons was  
20 being unlawfully targeted for vehicle stop and seizure.  
21

22           35. Furthermore, defendant City of King City failed to train its police officers,  
23 including the individual police officer defendants, as to the reasonable, justifiable and proper  
24 and improper circumstances for seizure, impoundment, and sale of vehicles, and disposition of  
25 the proceeds of the impoundment and/or sale of such vehicles after seizure.  
26  
27  
28

36. Police corruption in general, and targeting economically disadvantaged, low-income, and less-influential populations for the exercise of corrupt schemes such as that in this case, are situations that are known to police departments and municipalities throughout the United States to occur with alarming frequency, and it is unreasonable and unjustifiable for defendant City of King City to fail to have, implement, and/or enforce effective policies for the prevention, detection, and eradication of such corrupt conduct.

37. In addition, defendant City of King City itself profited from the unlawful scheme and conspiracy implemented by the individual defendants in that the defendant City of King City received fines and other fees paid by the plaintiff and class members collected as a result of bogus traffic stops, as well as a portion of the impoundment and/or sales proceeds for each vehicle unlawfully seized, impounded, and/or sold, and deliberately failed to have in place or enforce a policy that would minimize the risk that the defendant City of King City would be party or complicit in the individual defendants' unlawful scheme.

38. The failure of the defendant City of King City to have, implement, enforce, and monitor the aforesaid policies constitutes a municipal custom or policy to permit, fail to prevent, acquiesce in, profit from, and ratify the individual defendants' extensive, pervasive, and outrageous violation of the plaintiffs' constitutionally protected property rights, which reflects a deliberate choice on the part of the defendant City of King City not to take action and a custom, practice, and policy of deliberate indifference to the violation of the plaintiffs' constitutionally protected property rights herein alleged.

### COUNT III

## Conspiracy to Violate Civil Rights: 42 U.S.C. § 1985(3) (Against Individual Defendants)

1           39. Plaintiff realleges each and every preceding allegation and paragraph of this  
2 Complaint and incorporates same by reference into this Count III as if here set out in full.

3           40. Before the commission of the wrongful acts herein alleged, but at a time  
4 otherwise unknown to plaintiffs, the individual defendants and each of them knowingly and  
5 willfully agreed and conspired among themselves to undertake the wrongful acts herein  
6 alleged, and/or each individual defendant furthered the conspiracy by cooperation, profiting  
7 from lending aid, ratifying, and/or adopting the wrongful acts committed by other members of  
8 the conspiracy.  
9

10           41. The object of the said conspiracy was to unlawfully take the personal property  
11 of the plaintiffs and members of the class and to convert that personal property, or to obtain  
12 dominion and control over money from the sale of that personal property, to their own use and  
13 benefit and/or the use and benefit of some other unknown persons, all in violation of 42 U.S.C.  
14 §§ 1981 and 1983 as alleged.  
15

16           42. Each member of the said conspiracy, together with other unknown persons  
17 acting in active concert and participation with the individual defendants or other persons acting  
18 at the direction of the individual defendants, committed one or more wrongful act as herein  
19 alleged, and each member of the conspiracy profited monetarily from the unlawful scheme.  
20

21           43. As a result and consequence of the conspiracy and the wrongful acts committed  
22 in furtherance thereof, said defendants deprived plaintiffs and class members of their personal  
23 property without due process of law and contrary to the non-discrimination guarantees of  
24 federal law and the equal protection guarantees of the United States Constitution, and in  
25 deliberate and/or intentional violation of 42 U.S.C. §§ 1981, 1983, and 1985(3).  
26  
27  
28

**Class Action Allegations**

44. Plaintiff brings this action for himself and for a class of all other persons similarly situated under Fed. R. Civ. P. 23 preliminarily defined as follows:

All persons subjected to a traffic stop by an officer(s) of the King City, California, Police Department whose motor vehicles were seized, impounded, and thereafter sold or otherwise disposed of while under the control of the City of King City, during the period beginning three (3) years before this filing of this lawsuit until the present.

45. The class is estimated to consist of at least 200 members whose vehicles were seized, impounded, and sold or otherwise appropriated by or at the direction of one or more of the defendants. An unknown number of additional class members likely exists. Class members are now located throughout the State of California and other states, and joinder of all members of the prospective class is impracticable.

46. There are questions of law or fact common to the class, including, but not limited to the following:

(a). Whether the acts of the individual defendants alleged herein and to be proved by the evidence constitute an actionable wrongful taking of the plaintiff's and class members' property in violation of the plaintiff's and class members' well-defined constitutional property rights that is actionable under 42 U.S.C. §§ 1981 and/or 1983;

(b). Whether the acts or failures to act by defendant City of King City as alleged herein and to be proved by the evidence constitute deliberate indifference to the violations of the plaintiff's and class members' well-defined constitutional property rights that is actionable under 42 U.S.C. §§ 1981 and/or 1983;

1 (c). Whether the wrongful acts of the defendants alleged herein and to be  
2 proved by the evidence constitute an actionable conspiracy under 42 U.S.C. § 1985(3) to  
3 violate plaintiff's and class members' well-defined constitutional property rights;  
4

5 (d). Whether the class as a whole is entitled to permanent injunctive relief  
6 against the defendants, including, but not limited to, a mandatory injunction (1) requiring  
7 adoption, institution, and implementation of a policy designed and intended to prevent such  
8 wrongful acts in the future, together with permanent monitoring by an outside, non-affiliated  
9 state agency or official; (2) requiring adoption, institution, and implementation of a  
10 comprehensive training regimen for police officers and officials, including intensive ethics  
11 training, designed and intended to minimize the risk that such wrongful acts will occur in the  
12 future; and (3) requiring restitution and/or disgorgement of ill-gotten gains from the defendants  
13 in an amount due to the class as a whole, with distribution to individual class members based  
14 upon a classwide formula;  
15

16 (e). Whether the class as a whole is entitled to a declaratory judgment that  
17 the acts of the defendants alleged herein and to be proved by the evidence constitute actionable  
18 violations of the civil rights of each member of the class and violations of California law.  
19

20 (f). Whether the class as a whole is entitled to restitution and/or  
21 disgorgement of the proceeds of the aforesaid unlawful scheme in an amount to be determined  
22 by the evidence, and distributed to the members of the class by under a classwide formula  
23 relating thereto; and  
24

25 (g). Whether the class as a whole is entitled to a discrete, determinate  
26 quantum of other monetary relief from the defendants, and whether each member of the class is  
27 entitled to some amount thereof under a classwide formula relating thereto; and  
28

1 (h). Whether the class as a whole is entitled to an award of its attorneys' fees  
2 and litigation costs to be paid by the defendants under 42 U.S.C. § 1988(b).

3 47. The claims, and the factual predicate for those claims, asserted by the  
4 representative plaintiff are typical of the claims of the class, and the named plaintiff does not  
5 seek legal or equitable relief not sought by other members of the class.  
6

7 48. The representative plaintiff will fairly and adequately protect the interests of the  
8 class, and the named plaintiff's interests are not now and are not expected to be in the future  
9 antagonistic or adverse to those of the members of the class.  
10

11 49. Certification of the class herein is proper under Fed. R. Civ. P. 23(b)(1)(B),  
12 23(b)(2) and 23(b)(3).

13 50. As alleged herein and to be proved by the evidence, adjudication of the claims  
14 of any individual member of the prospective class would, as a practical matter, be dispositive  
15 of the claims and interests of other members of the prospective class not parties to the  
16 individual adjudications, and same would substantially impair or impede the absent class  
17 members' ability to protect their interests and recover meaningful, full, and appropriate relief  
18 from the defendants, thus making class certification under Fed. R. Civ. P. 23(b)(1)(B) proper.  
19

20 51. In the alternative, as alleged herein and to be proved by the evidence, the  
21 defendants have acted in a similar, virtually identical, way against each member of the class, so  
22 that final injunctive relief, specifically appropriate mandatory injunctions, with corresponding  
23 declaratory relief is appropriate respecting the class as a whole, thus making class certification  
24 under Fed. R. Civ. P. 23(b)(2).  
25

26 52. In the further alternative, class certification under Fed. R. Civ. P. 23(b)(3) is  
27 proper because the questions of law or fact common to class members, including but not  
28

exclusively those set out above, predominate over any questions affecting only individual class members, and a class action is superior to the filing of lawsuits by each prospective class member against the same defendants for the same relief, and is superior to other methods of adjudicating the controversy.

### **Prayer for Relief**

WHEREFORE, plaintiff, for himself and for class of all others similarly situated, demands judgment against defendants City of King City, Bruce Edward Miller, Bobby Javier Carrillo, Mario Alonso Mottu, Sr., Jaime Andrade, Dominic “Nick” Baldiviez, and Brian A. Miller as follows:

- A. For an order that this action be certified as a class action;
- B. For an order that the named plaintiff be appointed as representative of the class;
- C. For an order that the attorneys of record for plaintiff be appointed class counsel;
- D. For appropriate final injunctive relief as proved by the evidence at trial;
- E. For a declaratory judgment, pursuant to 28 U.S.C. §§ 2201-2202, declaring that defendants’ wrongful actions alleged herein are unlawful and in violation of the Civil Rights Acts, particularly 42 U.S.C. §§ 1981 and 1983;
- F. For restitution and/or disgorgement of ill-gotten gains from the defendants in an amount due to the class as a whole to be determined by the evidence, with distribution to individual class members based upon a classwide formula;
- G. For incidental compensatory damages in an amount due to the class as a whole, with distribution to individual class members based upon a classwide formula;

1 H. For an award of the plaintiffs' attorneys' fees and litigation costs pursuant to 42  
2 U.S.C. § 1988(b), together with pre-judgment and post-judgment interest on all items of  
3 monetary recovery;

4  
5 I. For other, further, and different relief, at law or in equity, to which plaintiffs and  
6 the class are entitled in the circumstances.

7 **Jury Demand**

8 Plaintiffs demand trial by jury of all issues in this cause properly triable thereby.

9 Dated: March 10, 2014

10  
11 /s/Fernando F. Chavez

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